

2001 Assembly Bill 157

Date of enactment: April 22, 2002

Date of publication*: May 6, 2002

2001 WISCONSIN ACT 95

AN ACT to amend 938.396 (2) (d); and to create 938.3415, 941.291, 971.17 (1h) and 973.0335 of the statutes; relating to: possession of body armor by persons convicted of or adjudicated delinquent for certain felony offenses and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 938.3415 of the statutes is created to read:

938.3415 Delinquency adjudication; restriction on body armor possession. Whenever a court adjudicates a juvenile delinquent for an act that if committed by an adult in this state would be a violent felony, as defined in s. 941.291 (1) (b), the court shall inform the juvenile of the requirements and penalties under s. 941.291.

SECTION 2. 938.396 (2) (d) of the statutes is amended to read:

938.396 (2) (d) Upon request of a court of criminal jurisdiction or a district attorney to review court records for the purpose of setting bail under ch. 969, impeaching a witness under s. 906.09, or investigating and determining whether a person has possessed a firearm in violation of s. 941.29 (2) or body armor in violation of s. 941.291 (2) or upon request of a court of civil jurisdiction or the attorney for a party to a proceeding in that court to review court records for the purpose of impeaching a witness under s. 906.09, the court assigned to exercise jurisdiction under this chapter and ch. 48 shall open for inspection by authorized representatives of the requester the records of the court relating to any juvenile who has been the subject of a proceeding under this chapter.

SECTION 3. 941.291 of the statutes is created to read:

941.291 Possession of body armor. (1) DEFINITIONS. In this section:

(a) "Body armor" means any garment that is designed, redesigned, or adapted to prevent bullets from penetrating through the garment.

(b) "Violent felony" means any felony, or the solicitation, conspiracy, or attempt to commit any felony, under s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19, 940.195, 940.20, 940.201, 940.203, 940.21, 940.225, 940.23, 940.285 (2), 940.29, 940.295 (3), 940.30, 940.305, 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20, 941.26, 941.28, 941.29, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), (1m), or (1r), 943.32, 946.43, 947.015, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08, or 948.30.

(2) PROHIBITION. Except as provided in subs. (4), (5), (5m), and (6), no person may possess body armor if any of the following applies to the person:

(a) The person has been convicted of a violent felony in this state and has not been pardoned for it.

(b) The person has been convicted of a crime elsewhere that would be a violent felony if committed in this state and has not been pardoned for it.

* Section 991.11, WISCONSIN STATUTES 1999-00 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(c) The person has been adjudicated delinquent for an act that if committed by an adult in this state would be a violent felony.

(d) The person has been found not guilty of a violent felony in this state by reason of mental disease or defect.

(e) The person has been found not guilty of or not responsible for a crime elsewhere by reason of insanity or mental disease, defect, or illness if the crime would be a violent felony in this state.

(3) PENALTY. (a) Whoever violates sub. (2) is guilty of a Class E felony.

(b) Whoever violates sub. (2) after being convicted of violating sub. (2) is guilty of a Class D felony.

(4) REQUEST BY CERTAIN PERSONS FOR COMPLETE OR PARTIAL EXEMPTION FROM PROHIBITION. (a) A person who is otherwise prohibited from possessing body armor under sub. (2) may request a complete or partial exemption from the prohibition if all of the following apply:

1. The person has a reasonable need to possess body armor to ensure his or her personal safety, to earn a livelihood, or as a condition of employment.

2. The person is likely to use the body armor in a safe and lawful manner.

(b) A person seeking a complete or partial exemption under this subsection from the prohibition under sub. (2) shall request the exemption by filing a written motion in the circuit court for the county in which the person will possess the body armor. A person who files a motion under this paragraph shall send a copy of the motion to the district attorney for the county in which the motion is filed. The district attorney shall make a reasonable attempt to contact the county sheriff and, if applicable, the chief of police of a city, village, or town in the county in which the person will possess the body armor for the purpose of informing the sheriff and the chief of police that the person has made a request for an exemption and to solicit from the sheriff and chief of police any information that may be relevant to the criteria specified in par. (a) 1. and 2.

(c) A court deciding whether to grant a request for an exemption made under par. (b) may deny the request for an exemption, grant a complete exemption from the prohibition, or grant a partial exemption by allowing possession of body armor only under certain specified circumstances or in certain locations or both. In deciding whether a person satisfies the criteria specified in par. (a) 1. and 2. and, if so, whether to grant an exemption, the court shall consider the person's character, including the person's criminal record, the totality of the person's circumstances, and any relevant evidence of the person's character and circumstances, including any relevant evidence submitted by the district attorney who received the copy of the motion under par. (b).

(d) If a court grants a request for an exemption under par. (c), the court shall issue a written order of exemption to the person who requested the exemption. The exemp-

tion is valid only in the county in which the court is located. If the exemption is a partial exemption, the order shall specify the circumstances under which the person may possess body armor, the locations in which the person may possess body armor, or, if applicable, both. The person granted the exemption shall carry a copy of the order of exemption at all times during which he or she is in possession of body armor. The clerk of the circuit court shall send a copy of the order of exemption to the county sheriff and, if applicable, to the chief of police of a city, village, or town in the county in which the person will possess the body armor.

(5) EXEMPTION BASED ON REQUEST OF LAW ENFORCEMENT AGENCY FOR CERTAIN WITNESSES AND INFORMERS. A person who is otherwise prohibited from possessing body armor under sub. (2) may wear body armor if the person is furnishing or has furnished information to a law enforcement agency relating to a possible violation of law or is assisting or has assisted a law enforcement agency in an investigation of a possible violation of law and is wearing the body armor at the request or direction of the law enforcement agency.

(5m) EXEMPTION BASED ON REQUEST BY CERTAIN WITNESSES AND INFORMERS. (a) A person who is otherwise prohibited from possessing body armor under sub. (2) may possess body armor if all of the following apply:

2. The law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance determines that there is reason to believe that the person may be in danger of suffering death or great bodily harm because he or she is furnishing or has furnished information or because he or she is assisting or has assisted or is assisting in an investigation.

3. The law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance approves of the person's request to possess body armor under par. (b).

(b) A person seeking an exemption under this subsection from the prohibition under sub. (2) shall request the exemption from the law enforcement agency to which the person is furnishing or has furnished information or to which the person is providing or has provided assistance. The law enforcement agency may deny the request for an exemption, grant a complete exemption from the prohibition, or grant a partial exemption by allowing possession of body armor only under certain specified circumstances or in certain locations or both. If the law enforcement agency grants a request for an exemption under this subsection, it shall keep a written record of the exemption. If the exemption is a partial exemption, the record shall specify the circumstances under which the person may possess body armor, the locations in which the person may possess body armor, or, if applicable, both. A written record relating to an exemption granted by a law

enforcement agency under this subsection is not subject to inspection or copying under s. 19.35 (1), except that a written record shall, upon request, be disclosed to another law enforcement agency or a district attorney, if the other law enforcement agency or the district attorney is investigating or prosecuting an alleged violation of sub. (2) or to the person to whom the exemption was granted.

(6) EXEMPTION FROM PROHIBITION FOR CERTAIN PRISONERS. A person who is prohibited from possessing body armor under sub. (2) may wear body armor if he or she is in the actual custody of a law enforcement officer, as defined in s. 165.85 (2) (c), or a correctional officer, as defined in s. 102.475 (8) (a), and is wearing the body armor at the request or direction of the law enforcement officer or correctional officer.

SECTION 4. 971.17 (1h) of the statutes is created to read:

971.17 (1h) NOTICE OF RESTRICTIONS ON POSSESSION OF BODY ARMOR. If the defendant under sub. (1) is found not guilty of a violent felony, as defined in s. 941.291 (1) (b), by reason of mental disease or defect, the court shall inform the defendant of the requirements and penalties under s. 941.291.

SECTION 5. 973.0335 of the statutes is created to read:

973.0335 Sentencing; restriction on possession of body armor. Whenever a court imposes a sentence or places a defendant on probation for a conviction for a violent felony, as defined in s. 941.291 (1) (b), the court shall inform the defendant of the requirements and penalties under s. 941.291.

SECTION 6. Initial applicability.

(1) POSSESSION OF BODY ARMOR. (a) In this subsection, "violent felony" has the meaning given in section 941.291 (1) (b) of the statutes.

(b) The treatment of section 941.291 of the statutes first applies to the possession of body armor that occurs on the effective date of this subsection, but does not preclude the counting of an act that was committed before the effective date of this subsection for purposes of determining whether any of the following makes a person subject to section 941.291 of the statutes:

1. The person has been convicted of a violent felony in this state.
2. The person has been convicted of a crime elsewhere that would be a violent felony if committed in this state.
3. The person has been adjudicated delinquent for an act that if committed by an adult in this state would be a violent felony.
4. The person has been found not guilty of a violent felony in this state by reason of mental disease or defect.
5. The person has been found not guilty of or not responsible for a crime elsewhere by reason of insanity or mental disease, defect, or illness if the crime would be a violent felony in this state.

(2) INFORMATION AT DISPOSITIONAL HEARINGS. The treatment of section 938.3415 of the statutes first applies to dispositional hearings that occur on the effective date of this subsection.

(3) INFORMATION AT COMMITMENT HEARINGS. The treatment of section 971.17 (1h) of the statutes first applies to commitment hearings that occur on the effective date of this subsection.

(4) INFORMATION AT SENTENCING. The treatment of section 973.0335 of the statutes first applies to sentencing proceedings that occur on the effective date of this subsection.